

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-442

March 20, 2003

ONESTAR LONG DISTANCE, INC.
Appeal of Consumer Assistance Division
Decision 2002-12186 Regarding
Sermatech International

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we uphold the decision of our Consumer Assistance Division (CAD) concerning OneStar Long Distance Inc.'s (OneStar) unauthorized service change for customer, Sermatech International (Sermatech).

II. BACKGROUND

On March 11, 2002, a representative of Sermatech complained to CAD that its dial tone and interstate/intrastate long distance service had been switched to OneStar without proper authorization. CAD's investigation revealed that OneStar changed to OneStar Sermatech's basic service (dial tone) and interstate/intrastate long distance on February 15, 2002. OneStar billed Sermatech for charges totaling \$1,258.84 on February 21, 2002.

The investigation further revealed that OneStar called Sermatech at the beginning of February and spoke to Kerry Robinson soliciting Sermatech's service. Ms. Robinson is an accountant with Sermatech. Ms. Robinson told OneStar she was not authorized to make changes and that the only person authorized was Roger Dumas.

OneStar called Sermatech again on February 15 and spoke to Bill Tuttle, the Information Tech Coordinator. The Third Party Verification tape reveals that Mr. Tuttle agreed to the change in service. Mr. Tuttle is not the contact person on the account, the contact person for telecommunications, or an owner or officer of the Company.

CAD found that because the person answering the question was not authorized to make such a change, OneStar had violated the Commission rules, Chapter 296 §§ 3(A) and 1(B)(2). When contacted by CAD, OneStar returned Sermatech to its original carriers. CAD also directed it to credit the customer's account for all unpaid charges, refund any amounts Sermatech paid for unauthorized service and refund the costs billed by local exchange carriers for service.

OneStar appealed the CAD decision to the Commission. OneStar claims that it complied with the Commission's verification rules in Chapter 296, section 3 and that it had no way of knowing that Mr. Tuttle, who stated that he was

authorized, was in fact not authorized to make the change. OneStar states that “it cannot be held liable for the untruths” of a Sermatech employee.

III. DISCUSSION AND DECISION

We uphold CAD’s decision for the reasons described below.

A. Maine’s Statute and Regulations

Maine statutes provide that a local or intrastate carrier may not initiate the change of a customer’s local or intrastate service unless the change is verified by one of the following methods:

- (1) Written authorization from the customer;
- (2) Toll-free electronic authorization placed from the telephone number that is the subject of the change order; or
- (3) Oral authorization obtained by an independent third party.

35-A M.R.S.A. § 7106(1)(A). The Legislature authorized the Commission to adopt rules to implement these provisions. These rules must be consistent with the Federal Communications Commission’s rules governing the initiation of a change of a customer’s interstate carrier (with certain exceptions not pertinent here). 35-A M.R.S.A. § 7106(3). The Commission adopted such rules in September 1999. Chapter 296 § 3(A) prohibits a carrier from submitting a change in a customer’s preferred telecommunications carrier without authorization from the customer, pursuant to section 3(B). Section 3(B) requires a carrier submitting a change to obtain verification with a letter of agency, electronic authorization or third-party verification. Section 1(B)(2) defines “customer” as “any person who has agreed to receive, been accepted and is receiving telecommunication service or has agreed to be billed for the same, including that person’s spouse or legal guardian. For businesses, ‘customer’ also includes a person designated as the contact person for the telecommunications services or an officer or owner of the business.”

B. Federal Requirements

The FCC’s rules pertaining to changes in interstate service appear in 47 C.F.R. §§ 64.1100 – 64.1195. Under the rules, states may elect to administer these rules. The Maine PUC made such an election in September 2000. Therefore, we apply the FCC rules to interstate changes and our own Chapter 296 to intrastate changes. As noted above, by Maine law, Maine’s rules must be “consistent with” the FCC’s rules.

The Federal rules refer to subscribers where Maine rules refer to customers. The Federal rules define subscriber as any one of the following: (1) the party identified in account records as responsible for paying the bill; (2) any adult authorized by such party to change services; or (3) any person contractually or otherwise lawfully authorized to represent such party. 47 C.F.R. § 64.1100(g). Under the Federal rules, no telecommunications carrier shall submit a preferred carrier change

unless it: (1) obtains written authorization from the subscriber; (2) obtains the subscriber's electronic authorization; (3) obtains a qualified independent third-party verification; or (4) meets any state-enacted verification procedure applicable to intrastate preferred carrier change orders only. The Federal rules require that the third party verifier elicit: the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; and additional information concerning the service to be changed. 47 C.F.R. § 64.1120 (c).

C. Application of State and Federal Requirements

At issue in this case is the situation in which a person answers affirmatively that he is "authorized" and subsequently the subscriber/customer claims he never authorized the person to make any such changes. CAD has taken the position that a carrier bears the risk of a person claiming he is authorized to make a change, and it later being revealed that he was not authorized when it accepts authorization for a carrier change from anyone other than the customer of record. Carriers can avoid such situations by only accepting authorization from the named customer of record, including the person designated as contact person or an owner or officer of the business. Carriers choosing to rely on the verbal statement from someone other than one of these individuals run the risk of accepting a change from an unauthorized person. This "strict liability" interpretation is consistent with the FCC's Order when it adopted these provisions.

The definition we adopt . . . allows customers of record to authorize additional persons to make telecommunications decisions. . . . [the rule] clearly identifies the customer of record as the source of authority over who is authorized to make telecommunications decisions. In addition, the definition we adopt distinguishes between two different types of authority: (1) authority based on the express or implied authorization of the customer of record, as reflected in carrier account records or elsewhere; and (2) authority based on federal and/or state law and regulations concerning agency and authority. We emphasize that, by adopting a definition, we are not imposing additional responsibilities on carriers in the submission or execution of carrier changes. Rather, carriers' responsibilities are determined by the framework of the current rules. Under these rules, submitting carriers are subject to liability for the submission of unauthorized changes, regardless of intent. As we held in the Section 258 Order, strict liability "provides appropriate incentives for carriers to obtain authorization properly and to implement their verification procedures in a trustworthy manner."

Implementation of Subscriber Carrier Select Changes Provisions of the Telecommunications Act, Third Report and Order and Second Order on Reconsideration, FCC 00-255 (rel Aug. 15, 2000) at ¶ 49 (emphasis added).

The FCC recently applied this strict liability standard in a case involving third-party verification. AT&T Communications Inc. (AT&T) admitted that its verification agent obtained confirmation of a change from an individual not authorized to make the

change. However, AT&T argued that “actual” authority was irrelevant to a determination of whether AT&T illegally switched the customers in that it had followed the verification procedures in the rules. The FCC disagreed because “a carrier cannot comply with the Commission’s verification procedures if it receives confirmation from an individual not authorized to make the change.” It found AT&T liable for the unauthorized changes made to the customer’s account. See *In the Matter of AT&T Communications Inc., Order of Forfeiture* (Rel. April 17, 2001), 16 FCC Rcd. 8978.

For enforcement purposes, if a carrier changes interstate service, or intrastate service for a business customer, based only on an oral representation by an individual stating or agreeing that she is authorized to make the change, and the customer or subscriber subsequently contacts CAD and states she never authorized such person, the CAD will treat the change as unauthorized.¹ The burden is on the carrier to ensure that it has processes in place to only accept changes from persons defined as a customer under our rules or who have actually been authorized by the subscriber/customer. For any change that was not authorized, CAD will require the carrier to switch the customer back and refund all charges. We believe this approach is reasonable and consistent with both Maine rules and Federal rules.

In this case, OneStar accepted verification of the change from an individual who was not named on the account, authorized as contact person for telecommunications decisions, an owner or officer and the contact for the account denied he was authorized. In addition, OneStar’s script failed to meet the requirements of either State or Federal rules in that the question supposedly confirming a person’s authority to make a change decision is combined with a question about date of birth and social security number, so a person is not even afforded an opportunity to answer yes or no to the question (“To confirm that you have authority to make decisions regarding your phone service, and to confirm your identity, at the tone, please state the month and date of your birth, if you prefer, you may state the last four digits of your social security number, then press the pound key”). Because the carrier changes were not authorized, we uphold CAD’s decision in this case.

Dated at Augusta, Maine, this 20th day of March, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

¹ This assumes that there is no other evidence that the customer/subscriber actually authorized the other person.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.